

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

HERMÈS INTERNATIONAL and  
HERMÈS OF PARIS, INC.,

Plaintiffs,

v.

MASON ROTHSCHILD,

Defendant.

Civ. Action No. 22-cv-00384-JSR

**DEFENDANT'S PROPOSED VERDICT FORM**

## **SPECIAL VERDICT FORM**

**Instructions:** Please read and answer the questions below, beginning with Question 1. After you have answered each question, follow the instructions *in italics* that correspond to your answer. The instructions will either direct you to answer another question or direct you to stop.

**Question 1. Are Mason Rothschild’s *MetaBirkins* artistic or expressive works—meaning, do they contain creative expression?**

Circle only one:      YES                              NO

*If your answer to Question 1 is YES, then proceed to Question 2.  
If your answer to Question 1 is NO, then proceed to Question 4.*

**Question 2. Does Mr. Rothschild’s use of the title “MetaBirkins” have any artistic relevance to the *MetaBirkins* artwork?**

Circle only one:      YES                              NO

*If your answer to Question 2 is YES, then proceed to Question 3.  
If your answer to Question 2 is NO, then proceed to Question 4.*

**Question 3. Did Mr. Rothschild explicitly mislead consumers into believing that Hermès was the source of the *MetaBirkins* artworks?**

Circle only one:      YES                              NO

*If your answer to Question 3 is YES, then proceed to Question 4.  
If your answer to Question 3 is NO, then **YOU ARE FINISHED**. Please proceed to the final page of this form, where each juror will sign, and then the foreperson will deliver this form in a sealed envelope to the Marshal.*

**Question 4. Has Hermès established by a preponderance of the evidence that the *MetaBirkins* are likely to cause confusion among purchasers of NFT artworks. That is, has Hermès proved that purchasers of NFT artworks are likely to believe that *MetaBirkins* are created by Hermès, or are associated or connected with Hermès, or have Hermès’ sponsorship, endorsement, or approval?**

Circle only one:      YES                              NO

*If your answer to Question 4 is YES, then proceed to Question 5.*

*If your answer to Question 4 is NO, then proceed to Question 6.*

**Question 5. Did Hermès establish by a preponderance of the evidence that it was or may be harmed by that likelihood of confusion?**

Circle only one:            YES                            NO

*Please proceed to Question 6.*

**Question 6. Has Hermès shown by a preponderance of the evidence that the Birkin mark that it accuses of being diluted became “famous”—widely recognized by the general consuming public of the United States—before Mr. Rothschild’s public release of the MetaBirkins artworks?**

Circle only one:            YES                            NO

*If you answered YES, please proceed to Question 7.*

*If you answered NO, please proceed to Question 8.*

**Question 7. Has Hermès established by a preponderance of the evidence that the MetaBirkins artworks were likely to dilute the Birkin mark?**

Circle only one:            YES                            NO

*Please proceed to Question 8.*

**Question 8. Only answer this question if you answered NO to Question 1. Has Hermès established by a preponderance of the evidence that Mr. Rothschild registered the metabirkins.com domain name in bad faith and with the intent to profit from use of the Birkin mark?**

Circle only one:            YES                            NO

Question 9. Only answer this Question 9, if you answered YES to Questions 4 or 5, or 7.

**Did Hermès establish by a preponderance of the evidence that it is entitled to recover all or a portion of Mr. Rothschild's profits from MetaBirkins?**

Circle only one:            YES                            NO

*If you answered YES, please proceed to Question 10.*

*If you answered NO, please proceed to Question 11.*

Question 10. If you answered YES to the previous question, what amount of Rothschild's profits is Hermès entitled to recover?

Answer: \_\_\_\_\_

*You have now completed the verdict form. Please have each juror sign the last page of this verdict and return it to the Marshal in a sealed envelope.*

Each juror should place his or her signature on the lines below.

I attest that the foregoing accurately reflects the jury's decision.

1. Foreperson

2.

3.

4.

5.

6.

7.

8.

9.

Dated: \_\_\_\_\_, 2023

*You are finished. Please provide this completed form in a sealed envelope to the Marshal.*

Dated: January 29, 2023

Respectfully Submitted,

/s/ Rhett O. Millsaps II  
Rhett O. Millsaps II  
Christopher J. Sprigman  
Rebecca Tushnet  
Mark P. McKenna (*pro hac vice*)  
LEX LUMINA PLLC  
745 Fifth Avenue, Suite 500  
New York, NY 10151  
(646) 898-2055  
rhett@lex-lumina.com

Jonathan Harris  
Adam B. Oppenheim  
Ashley Robinson  
HARRIS ST. LAURENT & WECHSLER LLP  
40 Wall Street, 53rd Floor  
New York, NY 10005  
jon@hs-law.com  
(212) 397-3370

*Attorneys for Defendant Mason Rothschild*